



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the
Request for Opinion concerning
the Conduct of STEVEN HORSFORD
Senator, State of Nevada,

Request for Opinion No. 10-79C

Public Officer.

PANEL DETERMINATION

NRS 281A.440(5); NAC 281A.440

Facts and Jurisdiction

The Nevada Commission on Ethics received an Ethics Complaint regarding the conduct of STEVEN HORSFORD, Senator, State of Nevada, alleging certain violations of the Ethics in Government Law set forth in NRS 281A. At the time of the alleged conduct, Senator Horsford was, and still is, a member of the Nevada Senate, a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers pursuant to NRS 281A.280. Therefore, the Commission initially may seem to have jurisdiction in this matter.

However, all of the conduct alleged in the Request for Opinion was undertaken by Horsford in his capacity as the President of the Victory 2010 PAC. Such conduct is regulated by NRS chapter 294 rather than NRS 281A, and is beyond the scope of this Commission. Therefore, the Investigatory Panel dismisses the Request for Opinion for lack of authority to exercise jurisdiction over the Request.

Even assuming, for the sake of argument, that the Commission has jurisdiction based upon the acts being characterized as Horsford seeking a gift or economic opportunity or advantage, the Investigatory Panel undertook the following analysis:

In the summer of 2010, Senator Steven Horsford signed a letter printed on letterhead from the "Victory 2010" Political Action Committee ("PAC") as its President, soliciting financial support for the PAC's articulated mission to support democratic candidates for State Senate. The PAC shares an address with Horsford's district office. The letter announced that donors at various levels would be thanked with various levels of benefits, including private meals or receptions to meet with various Democratic

legislative leaders and Senate committee chairpersons. The larger the contribution, the smaller and more "private" of an event was offered to the donor.

Shortly thereafter, the letters became public. The media responded vehemently arguing that Horsford had attempted to improperly influence lobbyists to "pay to play" - - that the letter delivered an ultimatum that to gain access to Senate Democrats, a donation to the PAC would be required in a *quid pro quo* arrangement.

Although the letter did not threaten to withhold access without a contribution or infer that Democrat legislators would shun those who did not donate, in response to the media feedback, Senator Horsford and Victory 2010 PAC rescinded the letter and discontinued the solicitation program to avoid the appearance of any impropriety. Victory 2010 cancelled all pledges received and returned all donations received in response to the letter. No access to Senate Democratic leaders was provided for the contributions pledged or received.

Commission staff presented the Investigatory Panel with the allegations in the Complaint as follows:

1. NRS 281A.400(1) - that Senator Horsford sought and accepted a gift or economic opportunity by selling access to high ranking legislative leaders. NRS 281A.400(1) states that "a public officer or employee shall not seek or accept any gift . . . or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties."

Senator Horsford denied that access to him or other legislators ever was conditioned on contributions to the PAC. He did not seek or accept any contribution in his personal or public capacity; rather he solicited contributions on behalf of a bona fide PAC. Additionally, political and campaign contributions have never been considered gifts or even a pecuniary interest under NRS 281A.400.

2. NRS 281A.400(2) - that Senator Horsford used his position as Senate Majority Leader to secure unwarranted privileges, preferences or advantages for himself and for Victory 2010, and its beneficiaries, who include his fellow Senate Democrats. NRS 281A.400(2) provides "a public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest. . . . "Unwarranted" means without justification or adequate reason."

Senator Horsford denies having any pecuniary interest in the non-profit PAC, and argued that he neither secured nor accepted any unwarranted benefit for himself or the PAC by using his position as an elected official or as the future Majority Leader of the Nevada Senate.

3. NRS 281A.400(4) - that donations to Victory 2010 PAC were to be personal augmentation or compensation to Senator Horsford from a private source for the performance of the senator's public duties. NRS 281A.400(4) states "a public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee."

In his response, Horsford claimed that no contributions to the PAC flowed to him as extra compensation for the performance of his duties as state Senator or Majority Leader, nor were they intended to. No evidence exists that Horsford accepted any compensation from any private source for performing his public duties.

Panel Proceeding

On January 13, 2011, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Paul Lamboley and Erik Beyer reviewed the following:

1) Request for Opinion; 2) Mr. Horsford's response to the Request for Opinion, 3) the Executive Director's Report and Recommendation. The following are the Panel's unanimous findings and conclusions as to each of the allegations:

1. The Nevada Commission o Ethics lacks jurisdiction to review the conduct alleged in the Request for Opinion, as that conduct appears to be regulated by chapter 294 of Nevada Revised Statutes over which the Commission has no authority.

2. Assuming, arguendo, the Commission had jurisdiction of the alleged conduct, credible evidence does not exist to support a finding of just and sufficient cause for the Commission to render an opinion whether Horsford violated NRS 281A.400 subsections (1), (2) or (4) by soliciting contributions on behalf of a Political Action Committee. The panel found that a minimum level of reliable and competent evidence did not exist to support a reasonable belief by the panel that Horsford had any personal benefit or pecuniary interest in the proceeds of the solicitation by Victory 2010. Therefore, the Investigatory Panel will not refer these allegations to the Commission for a hearing and the rendering of an opinion.

Dated: _____

Caren Jenkins, Esq.
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I placed a true and correct copy of the **PANEL DETERMINATION in Request for Opinion No. 10-79C**, in an envelope and caused same to be mailed via certified mail, return receipt requested, through the State of Nevada Mailroom to Steven Horsford's counsel, Bradley Schrager, Esq., and a true and correct copy of the **PANEL DETERMINATION in Request for Opinion No. 10-79C** to Steven Horsford, and the Requester, Dennis Johnson, via regular mail through the State of Nevada Mailroom addressed as follows:

Cert. No. 7002 2030 0005 8442 5123

Counsel for Steven Horsford

Andrew Subject

First Class Mail

Dennis Johnson

First Class Mail

DATED: _____

An employee, Nevada Commission on Ethics